

ASSEMBLY BILL

No. 2144

Introduced by Assembly Member Montanez

February 21, 2006

An act to amend Section 25395.96 of, and to add Section 25418 to, the Health and Safety Code, and to add Section 13307.5 to the Water Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 2144, as introduced, Montanez. Hazardous materials: land use.

(1) Existing law, the California Land Reuse and Revitalization Act of 2004, until January 1, 2010, provides that an innocent landowner, a bona fide purchaser, or a contiguous property owner, as defined, qualifies for specified immunity from liability for response costs or damage claims with regard to a site in an urban infill area, if the innocent landowner, bona fide purchaser, or contiguous property owner meets specified conditions. The act defines the term “agency” as meaning the Department of Toxic Substances Control, the State Water Resources Control Board, or a California regional water quality control board.

The act requires a bona fide purchaser, innocent landowner, or contiguous property owner who seeks to qualify for the immunity provided by the act to enter into an agreement with an agency, including the performance of a site assessment, and if the agency determines that a response plan is necessary, the preparation and implementation of a response plan. The act requires the response plan to include an opportunity for the public, other agencies, and the host jurisdiction to participate in decisions regarding the response action, and requires the regional board, if a regional board is the agency, to undertake specified actions for public participation and information.

The act requires the department, if it is the agency, to undertake other specified actions for public participation and information.

This bill would revise the public participation procedures that are required to be included in the response plan, including requiring the agency, 30 days before taking action on the response plan, to notify all other appropriate governmental entities and local agencies, including, but not limited to, the department, the regional board, or a redevelopment agency, that is not party to the response plan regarding the proposed response action. The bill would also require the agency to place a notice in a newspaper of general circulation, as specified, and post notice of the response action on and off the site.

The bill would delete the different requirements for a regional board and the department, depending on which entity is the agency, and would require the same actions for public participation and information, regardless of which entity, including a regional board or the State Water Resources Control Board, is the agency.

The bill would require the agency to consider the issue of environmental justice, as defined, for communities most impacted, including low-income and racial minority populations.

(2) Existing law, the Porter-Cologne Water Quality Control Act, requires a California regional water quality control board to give due notice of any hearing relating to investigating the quality of the waters of the state, prescribing waste discharge requirements, issuing cease and desist orders, requiring the cleanup or abatement of waste, or imposing administrative civil liabilities or penalties. The act requires a person who has discharged or discharges waste into the waters of the state, as specified, or who has caused or permitted, causes or permits, or threatens to cause or permit, waste to be discharged into the waters of the state, as specified, to, upon order of a regional board, clean up the waste or abate the effects of the waste, or take other necessary remedial action, as specified.

This bill would require a regional board to take specified actions when reviewing or approving a cleanup proposal from a primary or active responsible discharger with respect to a site issued a cleanup or abatement order, if the site meets the definition of a site under the California Land Reuse and Revitalization Act of 2004. The bill would require these actions to include providing notice of the proposed decision to approve a cleanup proposal for the site, providing timely access to written material, as specified, providing 30 days to comment on the cleanup proposal regarding the site, and conducting a public

meeting in the vicinity of the site during the public comment period if certain conditions apply. The bill would require the regional board, in the interest of disseminating information and assisting the regional board in gathering public input, regarding a site, to consider developing and using specified means for public communication and input.

(3) Existing law requires certain reports to be submitted to the Department of Toxic Substances Control.

The bill would authorize the Department of Toxic Substances Control to require a person submitting a report to the department to submit the report in electronic format. The bill would require the department to adopt a single, standard format for the electronic submission of analytical and environmental compliance data contained in a report, and would require the department, when adopting the format, to consider only formats that meet specified criteria.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25395.96 of the Health and Safety Code
2 is amended to read:

3 25395.96. (a) If, upon review of the site assessment prepared
4 pursuant to this article, the agency determines that a response
5 action is necessary to prevent or eliminate an unreasonable risk,
6 the bona fide purchaser, innocent landowner, or contiguous
7 property owner shall submit a response plan to the agency to
8 conduct a response action at the site, in conformance with the
9 agreement entered into pursuant to Section 25395.92. The
10 response plan shall include all of the following:

11 (1) (A) An opportunity for the public, other agencies, and the
12 host jurisdiction to participate in decisions regarding the response
13 action, taking into consideration the nature of the community
14 interest.

15 ~~(B) If a regional board is the agency, the regional board shall~~
16 ~~provide access to the proposed response plan and site assessment~~
17 ~~at the regional board for public review, conduct a public hearing~~
18 ~~with 30 days' prior notice, provide notice on the agenda of the~~
19 ~~public hearing, and take action on the response plan in a~~

~~regularly scheduled regional board meeting.~~ Thirty days before taking action pursuant to the response plan, the agency shall take all of the following actions:

(i) Notify all other appropriate governmental entities and local agencies, including, but not limited to, the department, the regional board, or a redevelopment agency, that is not a party to the response plan regarding the proposed response action.

(ii) Place a notice in a newspaper of general circulation, with publication no fewer than the number of times required pursuant to Section 6061 of the Government Code, in the area of the site.

(iii) Post notice of the response action on and off the site.

~~(C) If the department is the agency, the~~

(B) The methods for public participation proposed in the response plan shall include ~~reasonable~~ 30 days prior public notice in English and other languages commonly spoken in the area, access to the proposed response plan and site assessment at the agency and local repositories, and reasonable opportunity to comment. The ~~department~~ agency shall hold a public meeting in the area to receive comments if a public meeting is requested. The ~~department~~ agency shall consider any comments received prior to acting on the response plan. Methods for public participation may also include, but are not limited to, the use of factsheets, public notices, direct notification of interested parties, *electronic copies of the response plan and site assessment, electronic comment forms, forming advisory groups as appropriate to disseminate information and assist the agency in gathering public input, additional public meetings or public hearings*, and an opportunity to comment on the proposed response plan prior to approval.

(C) The agency shall consider the issue of environmental justice, as defined in subdivision (e) of Section 65040.12 of the Government Code, for communities most impacted, including low-income and racial minority populations before taking action on the response plan.

(D) To the extent possible, the agency shall coordinate its public participation activities with those undertaken by the host jurisdiction and other agencies associated with the development of the property, to avoid duplication to the extent feasible.

(E) It is the intent of the Legislature that the public participation process established pursuant to this subdivision

1 ensures full and robust participation of a community affected by
2 this chapter.

3 (2) Identification of the release or threatened release that is the
4 subject of the response plan and documentation that the plan is
5 based on an adequate characterization of the site.

6 (3) An identification of the response plan objectives and the
7 proposed remedy, and an identification of the reasonably
8 anticipated future land uses of the site and of the current and
9 projected land use and zoning designations. This identification
10 shall include confirmation by the host jurisdiction that the
11 anticipated future land uses and current and projected land uses
12 and zoning designations are accurate.

13 (4) A description of activities that will be implemented to
14 control any endangerment that may occur during the response
15 action at the site.

16 (5) A description of any land use control that is part of the
17 response action.

18 (6) A description of wastes other than hazardous materials at
19 the site and how they will be managed in conjunction with the
20 response action.

21 (7) Provisions for the removal of containment or storage
22 vessels and other sources of contamination, including soils and
23 free product, that cause an unreasonable risk.

24 (8) Provisions for the agency to require further response
25 actions based on the discovery of hazardous materials that pose
26 an unreasonable risk to human health and safety or the
27 environment that are discovered during the course of the
28 response action or subsequent development of the site.

29 (9) Any other information that the agency determines is
30 necessary.

31 (b) The agency shall evaluate the adequacy of the plan
32 submitted pursuant to subdivision (a) and shall approve the plan
33 if the agency makes all of the following findings:

34 (1) The plan contains the information required by subdivision
35 (a).

36 (2) When implemented, the plan will place the site in a
37 condition that allows it to be used for its reasonably anticipated
38 future land use without unreasonable risk to human health and
39 safety and the environment.

40 (3) The plan addresses any public comments.

1 (4) If applicable, the plan provides for long-term operation and
2 maintenance, including land use and engineering controls, that
3 are part of the remedy contained in the response plan.

4 (c) (1) On or before 60 days after the date an agency receives
5 a response plan, the agency shall make a written determination
6 that proper completion of the response plan constitutes
7 “appropriate care” for purposes of subdivision (a) of Section
8 25395.67.

9 (2) Upon approval of the response plan by the agency, the
10 agency shall notify all appropriate persons, including the host
11 jurisdiction.

12 (d) If the use of the property changes, after a response plan is
13 approved, to a use that requires a higher level of protection, the
14 agency may require the preparation and implementation of a new
15 response plan pursuant to this article.

16 (e) The owner of a site shall not make any change in use of a
17 site inconsistent with any land use control recorded for the site,
18 unless the change is approved by the agency in accordance with
19 subdivision (f) of Section 25395.99.

20 SEC. 2. Section 25418 is added to the Health and Safety
21 Code, to read:

22 25418. (a) The Department of Toxic Substances Control may
23 require a person submitting a report to the department to submit
24 the report in electronic format. The Department of Toxic
25 Substances Control may require that a report submitted in
26 electronic format include the latitude and longitude, accurate to
27 within one meter, of the location where a sample analyzed in the
28 report was collected.

29 (b) The Department of Toxic Substances Control shall adopt a
30 single, standard format for the electronic submission of analytical
31 and environmental compliance data contained in a report. When
32 adopting the standard format, the Department of Toxic
33 Substances Control shall consider only formats that meet all of
34 the following criteria:

35 (1) Are available at no cost.

36 (2) Are available in the public domain.

37 (3) Have available public domain means to import,
38 manipulate, and store data.

39 (4) Allow importation of data into tables that indicate
40 relational distances.

1 (5) Allow verification of data submission consistency.

2 (6) Allow inclusion of all of the following information:

3 (A) The physical site address from which the sample was
4 taken, and information required for permitting and reporting an
5 unauthorized release.

6 (B) Environmental assessment data taken during the initial site
7 investigation phase, as well as the continuing monitoring and
8 evaluation phases.

9 (C) The latitude and longitude, accurate to within one meter,
10 of the location where a sample was collected.

11 (D) A description of all tests performed on the sample, the
12 results of the testing, quality assurance and quality control
13 information, available narrative information regarding the
14 collection of the sample, and available information concerning
15 the laboratory's analysis of the sample.

16 (7) Fulfill any additional criteria that the Department of Toxic
17 Substances Control determines is appropriate for an effective
18 electronic report submission program.

19 SEC. 3. Section 13307.5 is added to the Water Code, to read:

20 13307.5. (a) The regional board shall take all of the
21 following actions when reviewing or approving a cleanup
22 proposal from a primary or active responsible discharger with
23 respect to a site issued a cleanup or abatement order pursuant to
24 Section 13304:

25 (1) Provide to all of the following, notification, in a factsheet
26 format or another appropriate format, in English and any other
27 languages commonly spoken in the vicinity, as appropriate, of
28 the proposed decision to approve the cleanup proposal for the
29 site, including a contact list of appropriate regional board staff:

30 (A) An affected or potentially affected property owner,
31 resident, or occupant in the vicinity of the site.

32 (B) An appropriate governmental entity, including a local
33 governmental entity with jurisdiction over the site.

34 (2) Provide timely access to written material, including reports
35 and plans, at the regional board's office and at a local repository
36 in the vicinity of the site, and, to the maximum extent possible,
37 by posting on the Internet and acting in accordance with
38 subdivision (a) of Section 13196.

39 (3) Provide 30 days for an interested person to review and
40 comment on the cleanup proposal regarding the site. The regional

1 board shall consider any comments received before taking final
2 action on a cleanup proposal regarding the site.

3 (4) Conduct a public meeting in the vicinity of the site during
4 the public comment period pursuant to paragraph (3), if any of
5 the following conditions apply:

6 (A) A public meeting is requested by an affected or potentially
7 affected property owner, resident, or occupant, in the vicinity of
8 the site.

9 (B) The level of expressed public interest warrants the conduct
10 of a public meeting.

11 (C) A public meeting is specifically mandated by statute.

12 (D) The regional board determines that the existing site
13 contamination poses a significant public health threat.

14 (b) In addition to the requirements of subdivision (a), in the
15 interest of disseminating information and assisting the regional
16 board in gathering community input regarding a site, and
17 depending on the level of expressed community interest, or if the
18 regional board determines that the existing site contamination
19 poses a significant public health threat, the regional board may
20 develop and use any of the following:

21 (1) A factsheet.

22 (2) An annual factsheet.

23 (3) Internet posting or electronic distribution of an electronic
24 copy of a document or report.

25 (4) An electronic comment or electronic feedback form.

26 (5) Formation and facilitation of an advisory group.

27 (6) An additional public meeting or workshop.

28 (7) Extension of a public comment period.

29 (8) Preparation of a public participation plan.

30 (9) Creation of a mailing list for notifying an interested party
31 of a major regional board decision and the regional board's
32 proposed or planned activity regarding the site.

33 (c) In undertaking the requirements of this section, a regional
34 board shall, to the extent possible, coordinate and integrate the
35 public participation activities described in this section with those
36 undertaken by the host jurisdiction and other public entities
37 associated with development, investigation, or the response
38 action at the site, in order to avoid unnecessary duplication and to
39 integrate the public participation efforts of local government.

- 1 (d) For purposes of this section, “site” has the same meaning
- 2 as defined in Section 25395.79.2 of the Health and Safety Code.

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